IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

S.T.C. No. 6 of 2006

Date of decision: 05.10.2007

M/s Kay Ess Traders, Sadar Bazar, Gurgaon

..... Petitioner

Versus

State of Haryana and another ..... Respondents

Coram: Hon'ble Mr. Justice M.M.Kumar
Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. G.K.Chawla, Advocate,
for the petitioner.

Ms. Ritu Bahri, DAG, Haryana.

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M.M.Kumar, J.

The assessee has invoked the provisions of Section 42 (2) of the Haryana General Sales Tax Act, 1973 (for brevity 'the Act') with a prayer for issuance of directions to the Sales Tax Tribunal, Haryana (for brevity 'the Tribunal') to state a case and refer the questions of law, which are stated to have arisen from its order dated 24.06.2005 in STA No. 707 of 2004-05. The assessee has claimed that the following questions of law would arise for determination of this Court:-

i) Whether in the facts and circumstances of the case, was the Tribunal correct in law in upholding the order of the Joint Excise and Taxation Commissioner (A), Faridabad dated 23.03.2004 and order passed under Section 40 of the Haryana General Sales Tax Act, 1973 creating an additional demand of Rs. 2,61,936/- for the assessment year 1987-88 in as much as the said order is erroneous, without jurisdiction and clearly violative of the principle of natural

justice?

ii) Whether in the facts and circumstances of the case the Hon'ble Tribunal was justified in inferring deliberate suppression of purchase transactions by ignoring the explanation of the petitioner?

iii) Whether in the facts and circumstances of the case, was the Hon'ble Tribunal justified in up-holding the Gross turn over of Rs. 10,70,000/- and tax liability of Rs. 87,312/- and penalty of Rs. 1,74,624/- under Section 48 of the Haryana General Sales Tax Act, 1973?

iv) Whether in the facts and circumstances of the case, was the Hon'ble Tribunal justified in up-holding the suppression of purchases made from the Jagadhari dealer and consequent evasion of sales tax and imposition of penalty without verification?

v) Whether in the facts and circumstances of the case, was the Prohibition, Excise and Taxation Commissioner, justified in taking suo moto reference under Section 40 of the Haryana General Sales Tax Act, 1973 after the order of the Assessing Authority had been set aside and the Assessing Authority had assessed the dealer under Section 10 of the Haryana General Sales Tax Act, 1973?"

However, at the time of arguments, learned counsel for the assessee has stated that another short issue, which would arise for determination of this Court is as under:-

" Whether the two members' bench of the Tribunal include such a member for deciding an application under Section 42 (1) of the Act when that member had at one stage decided the case of the petitioner in the appeal filed under Section 39 (5) of

the Act."

It has been submitted that Smt. Amarjeet Sachdeva at one stage had decided the appeal of the assessee vide order dated 26.08.1992 (P-3). A perusal of the order passed by the Tribunal dated 24.02.2006 (P-1) reveals that she has also heard the petition filed by the assessee under Section 42 (1) of the Act. According to the learned counsel, she could not have shared the Bench of the Tribunal while hearing the petition under Section 42 (1) of the Act as she had earlier decided this matter while hearing the appeal under Section 39 (5) of the Act. Mr. Chawla has also submitted that at this stage, he does not wish to press the other questions because the matter has to go back to the Tribunal on the aforementioned short ground.

Ms. Bahri, learned State counsel has not been able to dispute the aforementioned factual position, which is to the effect that Mrs. Amarjit Sachdeva had decided the appeal of the assessee on 26.08.1992 and she was also a member of the Tribunal, who passed the impugned order.

Having heard the learned counsel we are of the considered view that the issue raised by the learned counsel for the petitioner merits acceptance on the short ground that Mrs. Amarjit Sachdeva had acted as Appellate Authority under Section 39 (5) of the Act and she was also a member of the Bench of the Tribunal, which heard the application of the assessee under Section 42 (1) for referring the questions of law to this Court. Therefore, the order passed by the Tribunal dismissing the application of the assessee cannot be sustained and is liable to be set aside.

For the reasons aforementioned, this petition succeeds and order dated 24.02.2006 passed by the Tribunal is set aside. The case is remanded back to the Tribunal to decide the application afresh in accordance with law. Parties through their counsel are directed to appear

before the Tribunal on November 12, 2007 for further proceedings.

(M.M.KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

October 05, 2007
pj